

**Multistate Tax Commission
Uniformity Committee Meetings
Income and Franchise Tax Subcommittee
Sales and Use Tax Subcommittee
Tampa, Florida
March 17-18, 2005**

States

Donna McCuin, Arizona
Danny Walker, Arkansas
Andrea Chang, California FTB
Debbie Petersen, California FTB
Phil Horwitz, Colorado
Marshall Stranburg, Florida
Dick McFarland Idaho
Ted Spangler Idaho
Carol Ireland, Kansas
Leonore Heavey, Louisiana
Kurt VanBrocklin, Louisiana
Dale Vettel, Michigan
Wood Miller, Missouri
Eugene Walborn, Montana
Chuck Redfern, New Hampshire
Diana Vasquez, New Mexico
Lennie Collins, North Carolina
Marge Brewer, Ohio
Janielle Lipscomb, Oregon
Wyla Posey, Tennessee
Rusty Johnson, Texas
Hermi Nanez, Texas
Frank Hales, Utah

MTC Staff and Consultant

Frank Katz, MTC
Shirley Sicilian, MTC
Ken Beier, MTC
Jeff Silver, MTC
Roxanne Bland, MTC
Walt Nagel, Consultant to MTC

Members of the Public

Deborah Bierbaum, AT&T

Kendall Houghton, Sutherland, Asbill & Brennan
Lindsay McAfee, COST
Karen Boucher, Deloitte Tax
John Allan, Jones Day

Income and Franchise Tax Subcommittee

I. Welcome

Wood Miller, Chair of the subcommittee opened the meeting at 1:00 pm.

II. Public Comment Period

There were no public comments

III. Roundtable Discussion

State attendees reviewed significant income and franchise tax happenings in their states.

IV. Reports and Updates on Ongoing Income and Franchise Tax Subcommittee Projects

(A) Report on State Efforts toward Adoption of Uniformity Recommendations

No states reported any news on adoption of MTC uniformity recommendations.

(B) Report on Uniformity Recommendations still in Uniformity Process

Shirley Sicilian reviewed the status of two proposals—combined reporting and affiliate sales tax nexus, which were approved by the Executive Committee for public hearing. One hearing for each proposal was held in California and a second hearing for each will be held on March 29 in Washington, DC. Dial-in access will be provided at this hearing for the states and the public. The hearing officers' reports are expected to go to the Executive Committee in late April.

(C) Current Uniformity Projects

(1) Telecommunications Sales Factor Apportionment

Shirley Sicilian introduced Walter Nagel who is serving as pro bono counsel to the MTC for this project. She then explained the hierarchy of questions in the Policy Questions document that are aimed at the issue of whether telecommunications apportionment should be addressed through Section 17 or Section 18 or UDITPA.

Following comments on cost of performance issues by Ms. Sicilian, Mr. Nagle, and Ted Spangler--Deborah Bierbaum commented that

the industry has often acknowledged problems with cost of performance, but that this approach can be fixed. Phil Horwitz, Frank Katz and Ted Spangler then commented on the limitations of cost of performance—that it replicates the property and payroll factors, but that the states may also need to look at the market. Mr. Katz reiterated that even if it is possible to compute cost of performance, that it can give us inappropriate and sometimes arbitrary results. Ted Spangler noted that the group could go through the entire outline and still conclude that cost of performance is the least bad option. Colorado moved that the subcommittee recognize that there is a problem with cost of performance. This passed with 15 yes and 0 no votes.

Following discussion of the scope of services that would be covered by a telecommunications apportionment rule, Deborah Bierbaum supported the approach of applying the rules to all providers of relevant services, not to specific types of providers. Ms. Sicilian then explained a handout on telecommunications definitions.

(2) Model Add-Back Statute

Frank Katz explained the role of a special drafting group—composed of Michael Fatale of Massachusetts, Wood Miller of Missouri, Brian McCann of New York and Joe Garrett of Alabama—in development of the proposal. The model statute addresses interest and intangible expenses in separate sections. There are exceptions where the income is taxed at a reasonable rate by another state, taxed by a foreign government under a tax treaty or where payment to a third part occurs at a reasonable price. In response to a question from Louisiana, Mr. Katz commented that the proposal follows the “related member” definition in the Internal Revenue Code. Mr. Katz added that the group looked at similar statutes in 11 states and that the proposal addresses the Delaware situation by comparing the state’s corporate income tax rate to that imposed by Delaware.

Ted Spangler noted that the State Tax Compliance Initiative recommendation for an add-back statute was subsidiary to the recommendation for combined reporting. He stated and Mr. Katz confirmed that this would be a model for states that do not have combined reporting for the corporate income tax. California moved that this proposal be recommended to the full Uniformity Committee. This was seconded by Colorado and passed on a vote of 10 yes and 0 no.

(3) Model Reportable Transactions Statute

Shirley Sicilian explained that the development of this statute was recommended under the State Tax Compliance Initiative and

undertaken by a special drafting group composed of staff from California, Illinois, Louisiana and Utah. Three documents were reviewed by the committee—two versions of the reportable transactions statute and a statute for a voluntary compliance program. The difference between the reportable transactions statutes is that the first requires taxpayers to report inconsistent positions, while the second requires filing of all relevant factors, e.g., business and nonbusiness income, apportionment factors and apportionment percentages reported to each of the states. Deborah Petersen explained that the statute requires taxpayers to report the same transactions to the state that they are reporting to the federal government. In addition, it allows for states to define reportable transactions in addition to those listed by the IRS. Ms. Sicilian explained that the first approach to inconsistent reporting has some intuitive appeal, but imposes a larger compliance burden on taxpayers. The second approach is simpler for taxpayers, but may not provide as much valuable information to auditors. Karen Boucher expressed concerns that most taxpayers would not have these numbers when they are filing their initial returns on September 15. Ms. Peterson suggested that states could use the spreadsheet information from the second approach to narrow their scope of questions in an audit. Following additional discussion of approaches to inconsistent filing, Ted Spangler moved to defer the inconsistent filing requirement items for further discussion at a teleconference and subsequent consideration of the reportable transactions and inconsistent filing proposal by the subcommittee. This was seconded by Florida and passed with a vote of 14 yes and 0 no.

(4) Review of “On Behalf Of” Issue Paper

Shirley Sicilian cited the issue paper on this topic. Wood Miller moved adoption of this as a subcommittee project. This was seconded by Montana and passed on a vote of 10 yes and 0 no.

(5) Review of Joyce/Finnegan Issue Paper

Shirley Sicilian cited the issue paper which was drafted by Minnesota with assistance from Utah, Minnesota, and California. The issue paper recommends that the model combined reporting statute use the Joyce rule and notes that states that adopt the regulation consider a throwback rule. Adoption of the issue paper was moved by Ted Spangler, seconded by Louisiana and passed on a vote of 13 yes and 0 no.

Following comments from Roxanne Bland on potential federal legislation on business activity tax jurisdiction, the meeting was adjourned at 5:05 pm.

Sales and Use Tax Subcommittee

I. Welcome and Call to Order

Chair Adina Christian welcomed everyone to the meeting.

II. Public Comment Period

There was no public comment

III. Roundtable Discussion

Government attendees reviewed significant sales and use tax happenings in their states.

IV. Reports and Updates on Ongoing Sales and Use Tax Subcommittee Projects

A. Report on Uniformity Recommendations Still in Uniformity Process

1. Model Affiliate Nexus Statute

Frank Katz reported on the public hearing that took place on January 4, 2005 in Oakland, CA. Another hearing is scheduled for March 29, 2005. After that, the hearing officer's report and recommendation will be presented to the Executive Committee at its meeting in April, 2005.

B. Report on Current Activities

1. Hotel Intermediaries Project

The committee and industry representatives engaged in a discussion on the best method of dealing with this issue, with industry representatives indicating their preference for a two-track remittance procedure. The subcommittee directed staff to prepare a draft model statute that would be considered at a teleconference meeting in June.

2. State Department Proposal for Diplomatic Tax Exemptions

Roxanne Bland gave a brief explanation the diplomatic tax relief program currently under development by the Department of State. Under the proposal, the Department of State would have greater monitoring capability over the diplomatic use of exemptions, and merchants are relieved of the burden of verifying the legitimacy of diplomatic exemption cards when presented. The committee expressed reservation with how the program would be administered. The committee decided to hold a teleconference with State Department representatives to further investigate the issue.

3. Streamlined Sales Tax Project

The Project met on March 7-9 in Tampa, FL. The Project passed two resolutions, one urging states to consider amnesty for a group of companies that wish to voluntarily register with states under SST guidelines.

V. Report on MTC State Tax Compliance Initiative

No report was given.

VI. Adjournment

The meeting was adjourned.

Full Uniformity Committee

I. Welcome and Call to Order

Chairman Ted Spangler welcomed everyone to the meeting and had everyone introduce themselves.

II. Approval of Minutes of November, 2004 Meeting

Approval of the minutes was deferred to the next meeting.

III. Public Comment Period

No public comment was offered.

IV. Executive Committee Liaison Report and Commentary

There was no report.

V. Executive Director's Report

Roxanne Bland reported on the status of Executive Director search.

(Income/Franchise Tax Segment)

VI. Reports and Possible Action Items

Wood Miller, Chair of the Income and Franchise Tax Subcommittee gave the report. The Subcommittee discussed the array of telecommunications issues presented in a memo prepared by Shirley Sicilian with help from Leonore Heavey and Mike Brownell. The Subcommittee voted that it agrees there is a problem and that it intends to work on a fix. The Subcommittee reviewed the proposed uniform add-back statute and voted to recommend it to the full Uniformity Committee. It discussed the

Reportable Transactions and Inconsistent Filing Positions proposals and the scheduling of future teleconferences for further review of the proposals. The Subcommittee considered a report from a working group on the application of Joyce/Finnigan and voted to leave Combined Reporting as a Joyce position. Finally, the Subcommittee voted to take up a project on the exclusion of the cost of contractors working on behalf of taxpayer in the greater cost of performance determination for the sales factor.

Wood Miller moved to accept the recommendation of the Subcommittee to approve the proposed uniform add-back statute and refer it to the Executive Committee.

Leonore Heavey seconded the motion. 16 members voted yea. None opposed.

Wood Miller moved to accept the recommendation that the committee retain the Joyce position in the Combined Reporting proposal. Adina Christian seconded the motion. 16 yea, no opposed.

(Sales/Use Tax Segment)

VII. Reports and Possible Action Items

Adina Christian, Chair of the Sales and Use Tax Subcommittee gave the report. The Subcommittee discussed the Hotel Intermediaries Project with valuable input from representatives of the industry. Subcommittee members will go back to their states, meet with stakeholders and come up with ideas for a model statute. Further discussions will then be had by teleconference in July.

No action items were presented.

VIII. Reviewing Statements of Uniformity Policy Goals, Work Objectives and Timeline

IX. New Business

Nominations were taken for the location of next year's meeting. The first choice was San Diego and the second choice was Charleston.

X. Adjournment